

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.12.102, Forms,)	ON PROPOSED AMENDMENT
36.12.103, Form and Special Fees,)	AND REPEAL
36.12.115, Water Use Standards, and)	
the proposed repeal of ARM 36.12.108,)	
Public Notice Costs)	

To: All Concerned Persons

1. On August 15, 2008, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 31, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-0533, e-mail kovercast@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) through (s) remain the same.

(t) Form No. 637, "Reinstatement Request" (for reinstating a permit or change authorization); ~~and~~

(u) Form No. 638, "Water Reservation Application for Instream Flow" (for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B);~~i~~

(v) Form No. 640, "Certification of Water Right Ownership Update" (must be completed and submitted to the county clerk and recorder with a Realty Transfer

Certificate when a water right is being divided or exempted [reserved] from the property):

(w) Form No. 641, "DNRC Ownership Update, Divided Interest" (use for a water right that will be divided):

(x) Form No. 642, "DNRC Ownership Update, Exempt (Reserved) Water Right" (use for a water right that will be exempted [reserved] from a sale of land and the seller will retain ownership of the water right); and

(y) Form No. 643, "DNRC Ownership Update, Severed Water Right" (use to sever a water right from land. A severed water right does not involve a land sale).

AUTH: 85-2-113, MCA

IMP: 85-2-424, MCA

REASONABLE NECESSITY: Form Numbers 640, 641, 642, and 643 are needed to ensure that the department obtains the necessary information from water right owners who are dividing, reserving, or severing a water right.

36.12.103 FORM AND SPECIAL FEES (1) A filing fee, if required, shall be paid at the time the permit, change, notice of completion, extension of time request, temporary change renewal, ownership update, or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper filing fee within 30 days after notice shall result in a determination that the application is not correct and complete and it shall be terminated.

(a) through (q) remain the same.

(r) For Form No. 641, DNRC Ownership Update, Divided Interest, there shall be a fee of \$50 for each divided water right.

(s) For Form No. 642, DNRC Ownership Update, Exempt (Reserved) Water Right, there shall be a fee of \$25 for each exempted water right.

(t) For Form No. 643, DNRC Ownership Update, Severed Water Right, there shall be a fee of \$50 for each severed water right.

(2) There shall be no fees charged for filing the following forms:

(a) through (c) remain the same.

(d) Form No. 625, Correction to a Water Right; and

(e) Form No. 640, Certification of Water Right Ownership Update.

(3) remains the same.

AUTH: 85-2-113, MCA

IMP: 85-2-426, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act. The department evaluated processing costs for the new forms and determined the fee amount. The proposed fees for the new forms are expected to generate revenues of \$3250 each year and will affect approximately 80 people.

36.12.115 WATER USE STANDARDS (1) through (3) remain the same.

(4) For fire protection reservoirs located within a basin closure area, evaporation losses must be made up from nontributary water sources or addressed in an ~~augmentation~~ mitigation plan.

(5) and (6) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-362 through 85-2-364, 85-2-368, MCA

REASONABLE NECESSITY: In previous rulemaking, the term "augmentation" was replaced with the term "mitigation". The department found that one reference to "augmentation" was not changed. This rule is needed to correct that error.

4. The department proposes to repeal the following rule:

36.12.108 PUBLIC NOTICE COSTS found at ARM page 36-1742.

AUTH: 85-2-113, MCA

IMP: 85-2-307, MCA

REASONABLE NECESSITY: The department has determined that it, rather than the applicant, should complete the public notice process. The current rules were adopted to explain the process to the applicant and therefore no longer apply.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than August 15, 2008.

6. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Repeal is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Repeal conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing

preference is noted in the request. Such written request may be sent or delivered to the contact person in (5) above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on July 7, 2008.